

STATE OF TEXAS )  
 )  
COUNTY OF KENDALL )

**Property Owner: MIDDLETON LATH KING & JAMIE LEE**  
**Property Description: A10298 - SURVEY 180 M I LEAL 2.246 ACRES,**  
**(ESSER ADDITION LOT 21)**

**CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE**  
**DEVELOPMENT AGREEMENT**

This Agreement is entered into pursuant to Sections 43.016 and 212.172 of the Texas Local Government Code by and between the City of Boerne, Texas (the “City”) and the undersigned property owner(s) (the “Owner”). The term “Owner” includes all owners of the Property.

**WHEREAS**, the Owner owns a parcel of real property (the "Property") in Kendall County, Texas, which is more particularly and separately described in the attached Exhibit "A"; and

**WHEREAS**, the City has begun the process to institute annexation proceedings on all or portions of Owner's Property and will hold public hearings on Tuesday, May 28<sup>th</sup>, 2019 at 6:00 p.m. and on Tuesday, June 11, 2019 at 6:00 p.m.; and

**WHEREAS**, the Owner desires to have the Property remain in the City's extraterritorial jurisdiction, in consideration for which the Owner agrees to enter into this Agreement; and

**WHEREAS**, this Agreement is entered into pursuant to Sections 43.016 and 212.172 of the Texas Local Government Code, in order to address the desires of the Owner and the procedures of the City; and

**WHEREAS**, the Owner and the City acknowledge that this Agreement is binding upon the City and the Owner and their respective successors and assigns for the term (defined below) of this Agreement; and

**WHEREAS**, this Development Agreement is to be recorded in the Real Property Records of Kendall County.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**Section 1.** The City guarantees the continuation of the extraterritorial status of the Owner's Property, its immunity from annexation by the City, certain city regulations as defined herein and its immunity from City property taxes, for the term of this Agreement, subject to the provisions of this Agreement. Except as provided in this Agreement, the City agrees not to annex the Property, agrees not to involuntarily institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan for the Term of this Agreement. However, if the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to Chapter 43 of the Texas Local Government Code.

**Section 2.** The Owner covenants and agrees not to use the Property for any use other than for agriculture, wildlife management, and/or timber land consistent with Chapter 23 of the Texas Tax Code, except for existing single-family residential use of the property and any other exceptions identified in this document. Current uses, other than residential, shall be identified by the Owner as part of this agreement and provided to the City of Boerne upon signing the Agreement. Those non-residential uses shall be considered nonconforming and will be allowed to continue but will not be allowed to expand.

The Owner covenants and agrees that the Owner will not file any type of subdivision plat or related development document for the Property that creates a lot/lots smaller than two (2) acres in size or as described under the current property description at the beginning of this document (may be smaller than 2 acres if existing at time of execution of this agreement). Smaller lots may be created upon annexation into the City limits as regulated by the zoning provided at time of annexation.

The Owner covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a building permit if the Property were in the city limits, until the Property has been annexed into, and zoned by, the City except as listed below. The Owner also covenants and agrees that the City's most restrictive zoning, Residential-Agricultural zoning requirements apply to the Property, and that the Property shall be used only for Residential-Agricultural zoning uses that exist on that Property at the time of the execution of this Agreement, unless otherwise provided in this Agreement. New structures and additions to existing structures that are accessory to the residential or agricultural use will be allowed to be constructed (ie. barns, garages, additions to the existing dwelling, accessory dwelling) without further consideration by the city providing those structures do not constitute an increase of density or addition of commercial use on the lot. Only one accessory dwelling per lot is allowed.

The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect, and the Owner who signs this Agreement covenants and agrees, jointly and severably, to indemnify, hold harmless, and defend the City against any and all legal claims, by any person claiming an ownership interest in the Property who has not signed the Agreement, arising in any way from the City's reliance on this Agreement.

**Section 3.** The Owner acknowledges that if any plat or related development document is filed in violation of this Agreement (see Section 2), or if the Owner commences development of the Property in violation of this Agreement (see Section 2), then in addition to the City's other remedies, such act will constitute a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City Council. The Owner agrees that such annexation shall be voluntary and the Owner hereby consents pursuant to Section 212.172(b)(7). Upon voluntary annexation by the Owner, the Owner will not be required to connect to city utility services and may continue use of existing well and septic as long as those are maintained adequately by the Owner. Owner hereby waives any requirement in Chapter 43 related to procedures or service provision. Services will be provided to Owner's Property in accordance with existing city policy on the date of annexation, and as amended thereafter.

Furthermore, the Owner hereby waives any and all vested rights and claims that they may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owner has taken in violation of Section

2 herein.

**Section 4.** Pursuant to Sections 43.016(b)(1)(B) of the Texas Local Government Code, the City is authorized to enforce all of the City's regulations and planning authority that do not materially interfere with the current use of the Property for residential, agriculture, wildlife management, or timber, in the same manner the regulations are enforced within the City's boundaries. The City states and specifically reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement. Owner will not be regulated by the City regarding animal control, fire (burning), building construction, junk vehicles, noise or tree removal and landscaping. The City will maintain subdivision, platting, signage and lighting regulatory authority.

**Section 5.** The term of this Agreement (the "Term") is 10 years from the date that the City Manager's signature to this Agreement is acknowledged by a public notary. The Term of this Agreement will be automatically extended for successive ten (10) year terms unless otherwise terminated by mutual agreement of the Parties or pursuant to the terms of this Agreement. However, this Agreement may not extend past forty-five (45) years cumulatively.

The Owner, and all of the Owner's heirs, successors and assigns shall be deemed to have filed a petition for voluntary annexation before the end of the Term, for annexation of the Property to be completed on or after the end of the Term. Upon Owner's request and prior to the end of the Term, the City may commence the voluntary annexation of the Property. The Owner agrees that such annexation shall be voluntary and the Owner hereby consents pursuant to Section 212.172(b)(7). Owner hereby waives any requirement in Chapter 43 related to procedures or service provision. Services will be provided to Owner's Property in accordance with existing city policy on the date of annexation, and as amended thereafter.

Furthermore, the Owner hereby waives any and all vested rights and claims that they may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owner has taken in violation of Section 2 herein.

In connection with annexation pursuant to this section, the Owners hereby waive any vested rights they may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any plat or construction any of the owners may initiate during the time between the expiration of this Agreement and the institution of annexation proceedings by the City.

**Section 6.** Property annexed pursuant to this Agreement will initially be zoned most restrictive, Residential-Agricultural, pursuant to the City's Code of Ordinances, pending determination of the property's permanent zoning in accordance with the provisions of applicable law and the City's Code of Ordinances.

**Section 7.** Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to the City. Furthermore, the Owner and the Owner's heirs, successor, and assigns shall give the City written notice within 14 days of any change in the agricultural exemption status of the Property. A copy of either notice required by this section shall be forwarded to the City at the following

address:

City of Boerne, Texas  
Attn: City Manager  
P.O. Box 1677, Boerne, Texas 78006

**Section 8.** This Agreement shall run with the Property and be recorded in the real property records of Kendall County, Texas.

**Section 9.** If a court of competent jurisdiction determines that any covenant of this Agreement is void or unenforceable, including the covenants regarding involuntary annexation, then the remainder of this Agreement shall remain in full force and effect.

**Section 10.** This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter. Exhibit A, attached, and incorporated herein shall serve to clarify the terms of this Agreement.

**Section 11.** No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

**Section 12.** Venue for this Agreement shall be in Kendall County, Texas.

**Section 13.** This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

**Section 14.** This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Sections 3, 4, and 5 herein.

Entered into this 5 day of June, 2019.

  
Owner

Printed Name: Laton K. Middleton

  
Owner

Printed Name: Jamie L. Middleton

\_\_\_\_\_  
Owner

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Owner

Printed Name: \_\_\_\_\_

THE STATE OF TEXAS }

COUNTY OF Kendall }



This instrument was acknowledged before me on the 5th day of June, 2019, by [Signature], Owner.

[Signature]  
Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, Owner.

\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, Owner.

\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, Owner.

\_\_\_\_\_  
Notary Public, State of Texas

Ronald C. Bowman, City Manager, City of Boerne, Texas

THE STATE OF TEXAS        )

COUNTY OF KENDALL        )

      This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2019, by Ronald C. Bowman, City Manager, City of Boerne, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

## **EXHIBIT A**

### **SHARON DRIVE PROPERTY OWNER – ANNEXATION INFORMATION**

As the owner of property on Sharon Drive, you have recently received notification by the City of Boerne that we are interested in annexing your property. You were also offered a Non-Annexation Agreement. After discussion with many of the property owners on Sharon Drive, the City of Boerne has revised the Non-annexation Agreement to include the following:

- The term of the Agreement is 10 years which is automatically extended until terminated by mutual agreement (for a maximum term of 45 years)
- The owner may request annexation at any time
- No city taxes – No city services
- Existing commercial uses may remain, but shall not be enlarged – when submitting the Non-annexation agreement the property owner must notify the city planning office of existing uses on the lot other than residential/agricultural
- Owner may subdivide lots into 2 acre lots without being annexed (smaller lots are allowed if they exist that way now)
- Owner may build a new home or accessory buildings that support a residential or agricultural use on a lot (ie. barn, mother-in-law suite, storage shed, pool) - Only one mother-in-law suite (accessory dwelling) per lot
- Building permits are not required by the City
- Owner may sell to a perspective buyer or pass the property on to their heirs without triggering the annexation, unless there is a change in use of the property
- County regulations still apply (well/septic, development permits, etc)
- Owner will not be required to connect to city utility services and may continue use of existing well and septic
- City will regulate:
  - Platting (subdivision/development)
  - Signage
  - Lighting
- The City of Boerne will not enforce the following city regulations:
  - Animal control
  - Fire (burning)
  - Building (construction)
  - Junk vehicles
  - Noise
  - Tree removal/landscaping

If in agreement, please sign and notarize the Agreement document and return it to the City of Boerne Planning Dept (402 E. Blanco) by June 7<sup>th</sup>. If you have any questions, please call Laura Talley in the Planning Department at 830-248-1501.